

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-122
HOUSE BILL 571

AN ACT IMPOSING A SERVICE CHARGE ON EACH RETAIL TRANSACTION OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR ANY PURPOSE OTHER THAN RESALE OCCURRING IN THIS STATE, REQUIRING THAT THE SERVICE CHARGE BE COLLECTED BY THE SELLER OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE AND REMITTED TO THE DEPARTMENT OF REVENUE, AND PROVIDING THAT THE DEPARTMENT OF REVENUE SHALL TRANSFER ALL SERVICE CHARGES COLLECTED, MINUS THE COSTS OF COLLECTION, TO THE 911 FUND TO SUPPORT 911 SERVICES IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 62A-43(b) reads as rewritten:

"(b) Prepaid Wireless. – ~~A voice communications service provider of prepaid wireless telephone service must collect and remit to the 911 Board the monthly service charge imposed upon prepaid wireless telephone subscribers in the State under one of the following methods:~~

- (1) ~~Collecting the service charge from each active prepaid wireless telephone service subscriber whose account balance is equal to or greater than the amount of the service charge.~~
- (2) ~~Dividing the provider's total earned prepaid wireless telephone service revenue received for the month from each active prepaid wireless telephone service subscriber by fifty dollars (\$50.00) and multiplying the quotient by the amount of the service charge. The monthly service charge for 911 service is not imposed on prepaid wireless telephone service.~~

SECTION 1.(b) This section is effective when it becomes law.

SECTION 2. G.S. 62A-40 reads as rewritten:

"§ 62A-40. Definitions.

The following definitions apply in this Article.

- ...
- (15) Prepaid wireless ~~telephone~~ telecommunications service. – A wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount. A right that meets all of the following requirements:
 - a. ~~Authorizes the purchase of CMRS, either exclusively or in conjunction with other services.~~
 - b. ~~Must be paid for in advance.~~
 - e. ~~Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.~~

- ...
- (18a) Retail transaction. – The sale of prepaid wireless telecommunications service for any purpose other than resale."

SECTION 3. G.S. 62A-43, as amended by Section 1 of this act, reads as rewritten:



"§ 62A-43. Service charge for 911 service.

(a) Charge Imposed. – A monthly 911 service charge is imposed on each active voice communications service connection that is capable of accessing the 911 system. The service charge for service other than prepaid wireless telecommunications service is seventy cents (70¢) or a lower amount set by the 911 Board under subsection (d) of this section. The service charge is payable by the subscriber to the voice communications service provider. The provider may list the service charge separately from other charges on the bill. Partial payments made by a subscriber are applied first to the amount the subscriber owes the provider for the voice communications service.

(b) Prepaid Wireless. ~~—The monthly service charge for 911 service is not imposed on prepaid wireless service.~~ A 911 service charge is imposed on each retail purchase of prepaid wireless telecommunications service occurring in this State of seventy cents (70¢) for each retail transaction of prepaid wireless telecommunications service or a lower amount set as provided by subsection (d) of this section. The service charge is collected and remitted as provided in G.S. 62A-54.

(c) Remittance to 911 Board. – A voice communications service provider must remit the service charges collected by it under subsection (a) of this section to the 911 Board. The provider must remit the collected service charges by the end of the calendar month following the month the provider received the charges from its subscribers. A provider may deduct and retain from the service charges it receives from its subscribers and remits to the 911 Board an administrative allowance equal to the greater of one percent (1%) of the amount of service charges remitted or fifty dollars (\$50.00) a month.

(d) Adjustment of Charge. – ~~The 911 Board must monitor the revenues generated by the service charge charges imposed by this section. If the 911 Board determines that the rate produces rates produce revenue that exceeds or is less than the amount needed, the 911 Board may adjust the rate rates. The rate rates must ensure full cost recovery for voice communications service providers and for primary PSAPs over a reasonable period of time. The 911 Board must set the service charge for prepaid wireless telecommunications service at the same rate as the monthly service charge for nonprepaid service. A change in the amount of the rate becomes effective only on July 1. The 911 Board must notify providers of a change in the rate rates at least 90 days before the change becomes effective. The 911 Board must notify the Department of Revenue of a change in the rate for prepaid wireless telecommunications service at least 90 days before the change becomes effective. The Department of Revenue must provide notice of a change in the rate for prepaid wireless telecommunications service at least 45 days before the change becomes effective only on the Department's Web site.~~

...."

SECTION 4. G.S. 62A-44(b) reads as rewritten:

"(b) Allocation of Revenues. – The 911 Board may deduct and retain for its administrative expenses a percentage of the total service charges remitted to it under G.S. 62A-43 for deposit in the 911 Fund. The percentage may not exceed two percent (2%). The percentage is one percent (1%) unless the 911 Board sets the percentage at a different amount. The 911 Board must monitor the amount of funds required to meet its financial commitment to provide technical assistance to primary PSAPs and set the rate at an amount that enables the 911 Board to meet this commitment. The remaining revenues remitted to the 911 Board for deposit in the 911 Fund are allocated as follows:

- (1) A percentage of the funds remitted by CMRS ~~providers~~ providers, other than the funds remitted by the Department of Revenue from prepaid wireless telecommunications service, to the 911 Fund are allocated for reimbursements to CMRS providers pursuant to G.S. 62A-45.
- (2) A percentage of the funds remitted by CMRS ~~providers~~ providers, all funds remitted by the Department of Revenue from prepaid wireless

telecommunications service, and all funds remitted by all other voice communications service providers are allocated for monthly distributions to primary PSAPs pursuant to G.S. 62A-46 and grants to PSAPs pursuant to G.S. 62A-47.

- (3) The percentage of the funds remitted by CMRS providers allocated to CMRS providers and PSAPs shall be set by the 911 Board and may be adjusted by the 911 Board as necessary to ensure full cost recovery for CMRS providers and, to the extent there are excess funds, for distributions to primary PSAPs."

SECTION 5. Article 3 of Chapter 62A of the General Statutes is amended by adding a new section to read:

"§ 62A-54. Service charge for prepaid wireless telecommunications service; seller collects 911 service charge on each retail transaction occurring in this State; remittances to Department of Revenue and transfer to 911 Fund.

(a) Retail Collection. – A seller of prepaid wireless telecommunications service shall collect the 911 service charge for prepaid wireless telecommunications service from the consumer on each retail transaction occurring in this State. The 911 service charge for prepaid wireless telecommunications service is in addition to the sales tax imposed on the sale or recharge of prepaid telephone calling service under G.S. 105-164.4(4d). The amount of the 911 service charge for prepaid wireless telecommunications service must be separately stated on an invoice, receipt, or other reasonable notification provided to the consumer by the seller at the time of the retail transaction. For purposes of this Article, a retail transaction is occurring in this State if the sale is sourced to this State under G.S.105-164.4B(a).

(b) Administrative Allowance; Remittance to Department of Revenue. – A seller may deduct and retain from the 911 service charges it collects from consumers and remits to the Department of Revenue an administrative allowance of five percent (5%). A seller shall remit the 911 service charge for prepaid wireless telecommunications service collected by it under subsection (a) of this section in either of the following ways:

- (1) Monthly to the Department of Revenue. The service charges collected in a month are due by the 20th day of the month following the calendar month covered by the return.
- (2) Semiannually to the Department of Revenue. The service charges collected in the first six months of the calendar year are due by July 20. The service charges collected in the second six months of the calendar year are due by January 20.

(c) Administration. – Administration, auditing, requests for review, making returns, promulgation of rules and regulations by the Secretary of Revenue, additional taxes and liens, assessments, refunds, and penalty provisions of Article 9 of Chapter 105 of the General Statutes apply to the collection of the 911 service charge for prepaid wireless telecommunications service. An audit of the collection of the 911 service charge for prepaid wireless telecommunications service shall only be conducted in connection with an audit of the taxes imposed by Article 5 of Chapter 105 of the General Statutes. Underpayments shall be subject to the same interest rate as imposed for taxes under G.S. 105-241.21. Overpayments shall be subject to the same interest rate as imposed for taxes under G.S. 105-241.21(c)(2). Excessive and erroneous collections of the service charge will be subject to G.S. 105-164.11. The Department of Revenue shall establish procedures for a seller of prepaid wireless telecommunications service to document that a sale is not a retail transaction, and the procedures established shall substantially coincide with the procedures for documenting a sale for resale transaction under G.S. 105-164.28. The Secretary of Revenue may retain the costs of collection from the remittances received under subsection (b) of this section, not to exceed five hundred thousand dollars (\$500,000) a year of the total 911 service charges for prepaid wireless

telecommunications service remitted to the Department. Within 45 days of the end of each month in which 911 service charges for prepaid wireless telecommunications service are remitted to the Department, the Secretary of Revenue shall transfer the total 911 service charges remitted to the Department less the costs of collection to the 911 Fund established under G.S. 62A-44.

(d) Liability of Consumer. – The 911 service charge for prepaid wireless telecommunications service is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable for remitting to the Department of Revenue all 911 service charges for prepaid wireless telecommunications service that the seller collects from consumers as provided in subsection (b) of this section.

"§ 62A-55. Limitation of liability, prepaid wireless.

In addition to the limitation of liability provided in subsection G.S. 62A-53, each provider and seller of prepaid wireless telecommunications service is entitled to the following limitations of liability:

- (1) No provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of or the failure to provide 911 service, or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 911 service.
- (2) No provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigative or law enforcement officer of the United States, this State or any other state, or any political subdivision of this State or any other state in connection with any lawful investigation or other law enforcement activity by the law enforcement officer.

"§ 62A-56. Exclusivity of 911 service charge for prepaid wireless telecommunications service.

The 911 service charge for prepaid wireless telecommunications service imposed by this Article is the only 911 funding obligation imposed with respect to prepaid wireless telecommunications service in this State, and no tax, fee, surcharge, or other charge shall be imposed in this State, any subdivision of this State, or any intergovernmental agency for 911 funding purposes upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service."

SECTION 6. Chapter 105 of the General Statutes is amended by adding a new Article to read as follows:

"Article 5H.

"911 Service Charge for Prepaid Wireless Telecommunications Service.

"§ 105-187.70. Department comply with Article 4 of Chapter 62A of the General Statutes.

The Department of Revenue shall comply with the provisions of Article 3 of Chapter 62A of the General Statutes to receive and transfer to the 911 Fund the 911 service charge for prepaid wireless telecommunications service collected on retail transactions occurring in this State."

SECTION 7. Notwithstanding G.S. 62A-60(b), as enacted by Section 5 of this act, sellers that collect the 911 service charge for prepaid wireless telecommunications service may retain all of the service charges collected in the first three calendar months beginning on or after July 1, 2013.

SECTION 8. Notwithstanding G.S. 62A-60(c), as enacted by Section 5 of this act, the Department of Revenue may retain the cost of collection not to exceed seven hundred thousand dollars (\$700,000) of the 911 service charges for prepaid wireless

telecommunications service remitted to it from collections by sellers of the charge for the first 12 calendar months beginning on or after July 1, 2013.

SECTION 9. Unless otherwise provided, this act becomes effective July 1, 2013, and applies to all retail transactions occurring in this State, as that term is defined in this act, on or after that date.

In the General Assembly read three times and ratified this the 9th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 9:23 a.m. this 13th day of June, 2011